FILED
FEB 14 1977
MICHAEL RODAK, JR., CLERK

in the

Supreme Court of the United States

CASE NO. 76-629

C. CAREY MATTHEWS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

RESPONSE TO SUGGESTION THAT PETITIONER'S PETITION FOR CERTIORARI IS PREMATURE

LAW OFFICES OF
LEO GREENFIELD, P.A.
1680 N.E. 135th Street
North Miami, Florida 33181
Attorneys for Petitioner

FLORIDA FINANCIAL PRINTING, INC. — 377-2810

in the

Supreme Court of the United States

CASE NO. 76-629

C. CAREY MATTHEWS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

RESPONSE TO SUGGESTION THAT PETITIONER'S PETITION FOR CERTIORARI IS PREMATURE

COMES NOW the Petitioner, C. CAREY MATTHEWS, by and through his undersigned attorneys, and files this, his Response to the suggestion that Petitioner's Petition for Certiorari is premature, raised in the six page Brief of the Government untimely filed in opposition to Petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, and in support thereof avers:

1. The basic argument presented in the Government's Brief is that the Petitioner's request should be denied as premature. The Government states therein that since the Fifth Circuit has, "remanded the case to the district court for an evidentiary hearing on the voluntariness of petitioner's guilty plea, review of petitioner's contentions regarding the factual basis for that plea would be inappropriate at this stage."

2. In the interest of justice, the Petitioner advises the Court that the Evidentiary Hearing in question, has taken place and the United States District Court for the Southern District of Florida, has entered its Order denying the Petitioner's Amended Motion to Vacate his Guilty Plea, on the grounds that said plea was involuntary. Said Order rejecting the Petitioner's Amended Motion after Evidentiary Hearing dated October 13, 1976, is appended hereto as Exhibit "A", and the Order denying Petition for Rehearing, dated November 13, 1976, is appended hereto as Exhibit "B".

3. Accordingly, then, the Petition for Writ of Certiorari herein involved, is not premature, and in fact, unless the Petitioner had brought this Petition from the decision of the Fifth Circuit herein involved, the time to do so would have expired, and with it, the jurisdictional

basis for the contention of the Petitioner that his constitutional rights have been grievously violated in the instant cause.

WHEREFORE, the Petitioner respectfully requests his Petition for Writ of Certiorari to the Fifth Circuit be granted forthwith, by this Honorable Court.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true copy of the foregoing was this 8th day of February, 1977, mailed to:

ROBERT W. RUST, ESQ.,
U.S. Attorney
Ainsley Bldg.,
Miami, Florida

and

ROBERT H. BORK, ESQ.,
Solicitor General of the United States
Department of Justice
Washington, D.C. 20530

LAW OFFICES OF
LEO GREENFIELD, P.A.
1680 N.E. 135th Street
North Miami, Florida 33181
Attorneys for Petitioner

By_____
Leo Greenfield

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 74-1134-Civ-CA

C. CAREY MATTHEWS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER DENYING MOTION TO VACATE SENTENCE

[Filed Oct. 13, 1976]

THIS CAUSE came before the Court on plaintiff's motion to vacate sentence. The motion is denied.

On September 2, 1976, this Court conducted an evidentiary hearing directed to the issue of whether the government induced plaintiff's guilty plea by means of threat vel non. Because plaintiff alleged that the threat was made by the government attorney to plaintiff's attorney over the telephone, the testimony of those persons is the relevant testimony before the Court. The subjective thoughts of plaintiff and his partner are not material to the issue.

After careful analysis of the testimony adduced at the hearing, and after consideration of the memoranda submitted by both parties, it is the finding of this Court that although the attorney for the government may

have speculated to plaintiff's attorney that his client would receive a lengthy sentence if convicted, there was no threat conveyed. Accordingly, it is

ORDERED AND ADJUDGED that the motion to vacate sentence is denied.

ENTERED at Miami, Florida this 13th day of October, 1976.

/s/ C. Clyde Atkins
United States District Judge

cc.
U.S. Attorney
Leo Greenfield, Esq.

EXHIBIT "A"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 74-1134-Civ-CA

C. CAREY MATTHEWS,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

ORDER

[Filed Nov. 3, 1976]

THIS CAUSE having come before the Court on Petition for rehearing and the Court having considered the record in this cause, and being otherwise duly advised, it is

ORDERED AND ADJUDGED that said motion is DENIED.

DONE AND ORDERED at Miami, Florida, this 1st day of November, 1976.

/s/ C. Clyde Atkins
UNITED STATES DISTRICT JUDGE

copies furnished:
Leo Greenfield, Esq.
AUSA

EXHIBIT "B"